IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.4761 OF 1999

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAUHAN VANRAJSINH RATANSINH

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 4761 of 1999

MR. K.B. PUJARA for Petitioner

MR. ANANT S. DAVE for Respondent

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 25/03/2004

ORAL JUDGEMENT

1. By way of this petition, the petitioner seeks the relief, `to direct the respondent to consider his case for appointment as `Vidhya Sahayak' pursuant to the advertisement dated 1st May, 1999 and the application

submitted by him with attested copies of all certificates and to issue order of appointment on that basis'. It is also prayed to `direct the respondent not to exclude the petitioner from consideration for appointment as `Vidhya Sahayak' only on the ground that he has submitted attested copies of all certificates along with his application and not the original certificates'.

2. The petitioner has approached this Court contending that the respondent cannot reject his application for the post of `Vidhya Sahayak' made in response to an advertisement published in a Gujarati Daily, "Gujarat Samachar", dated 1st May, 1999, only on the ground that the application did not accompany the original certificates.

3. Mr.K.B.Pujara, learned Advocate appearing for the petitioner, submitted that the petitioner stand in merit having secured 74.51% on the basis of results of P.T.C. and H.S.C. Examinations. Mr.Pujara pointed out from Annexure-D to the petition that in Anand District, candidates belonging to Baxi Panch were recruited upto 72.18% in male category of P.T.C. qualified candidates. The petitioner, having secured 74.51% i.e. higher than 72.18%, was entitled to get the appointment. Mr.Pujara submitted that the question of asking the candidates to submit their original certificates had come up for consideration of this Court in number of cases, one of them, being Special Civil Application No.6504 of 1998 (in the matter of Patel Nanjibhai Kumpaji & Ors. vs. District Primary Education Officer & Ors.). The same was decided by this Court (Coram:Mr.Justice N.N.Mathur [as he then was]) by judgement and order dated 13th August, 1998 wherein the Court was pleased to hold that:

> "Considering all facts and circumstances of the case, it is directed that the District Primary Education Officer, Kutch will accept the application along with the xerox copies of the certificates produced by the petitioner and the same shall be provisionally considered. ... ..."

In another case, decided on 3rd May, 1999 by this Court (Coram:S.K.Keshote, J.) in the matter of Panchal Vijayalaxmi Babulal vs. District Primary Education Officer, being Special Civil Application No.3314 of 1999, this Court considered this aspect in detail and observed in paragraphs 17 and 18 as under:

17. Unemployment in the country is real a

serious problem. To get employment, unemployed persons are to submit their applications from time to time to different authorities of one or other districts in the State. In case it is desire or there is rule that candidates are to enclose to the application forms their original certificates of the qualifications, certainly it will adversely affect or denial of their fundamental rights of consideration for public employment. I fail to see any logic in the decision or the rule in calling for original certificates alongwith the applications. It is true that these are basic documents on the basis of which merits has to be prepared. If it is accepted then certainly for a considerable period, for want of original documents, many of the candidates may not be in a position to apply elsewhere also for the employment. Appointments to the post of Primary Teachers or Vidhya Sahayaks as per recruitment rules are made only on the basis of marks they secured in SSC and PTC, though interviews are being there and candidates are called for interview. In fact, no interview is taken nor any marks are prescribed for the interview and which are to be taken for preparation of merit list of the candidates. This in fact is a process of calling candidates to ascertain correctness of the documents by necessary verification thereof. So the purpose of calling of original documents alongwith the main application, if we go by this process to be followed in the form of interview is absolutely uncalled for, irrelevant and it is not in whatsoever the larger interest of the candidates. At this stage, insistence should have been only for genuine, authenticity and attested xerox copy of the same is understandable and sufficient.

18. I have seen many of the cases where the original of the certificates of the candidates are being retained by the District Panchayat for considerable long time. If it is really a condition or a rule to submit alongwith the application original certificates or marksheets or any other document, it is certainly arbitrary, unjustified and it may adversely result deprival of the rights of the many of the candidates of their consideration for the appointment in the Government or other services. Alongwith the applications, candidates should be permitted to

file xerox copies of the original duly attested, certified or authenticated either by the Gazetted Officer of the State of Gujarat or by the Notary Public or by the Executive Magistrate. Before making appointments candidates may be called with original documents for verification of the correctness of the attested xerox copies thereof.

The learned Advocate for the petitioner submitted that insistence for supply of original certificates results into denial of an opportunity to the candidate to apply for the post. He submitted that interest of justice will be served if the authorities are directed to consider the supply of original certificates as a condition, directory in nature, and should treat the said condition to have been complied with if original certificates are produced before the authority at the time of giving appointment.

4. Mr.Anant S.Dave, learned Advocate appearing for the respondent, submitted that furnishing of certificates in original was a condition precedent, entitling the candidate for consideration for the appointment to the post advertised. In this regard, he relied upon a decision of the Division Bench of this Court in Letters Patent Appeal No.1163 of 1998 in Special Civil Application No.6653 of 1998 dated 5th October, 1998. He submitted that the Division Bench has held that the condition of asking the candidates to submit the original certificates along with the application is just and proper and in accordance with law. It is further held that the said condition is not violative of Articles 14 and 16 of the Constitution of India. Mr.Dave, therefore, submitted that the action of the respondent of not considering the petitioner for appointment to the post advertised is in accordance with law and no interference is called for at the hands of this Court.

5. The learned Advocate for the petitioner submitted that the very judgement of the Division Bench was considered by this Court (Coram:Mr.Justice M.R.Calla [as he then was]) in judgement dated 13th December, 1999 passed in Special Civil Application No.9834 of 1999 in the matter between Hasmita Nathabhai Tank vs. Administrator Officer, wherein the learned Judge, after taking into consideration the aforesaid decision and the submissions of the authorities, has observed as under:

4. I have considered the submissions made on behalf of both the sides. Even if it is taken

> that the requirement of submitting the original documents is not unreasonable and is not violative of Articles 14 and 16 of the Constitution of India, the prima facie question still remains to be examined as to whether requirement of submitting the original documents along with the application is a mandatory requirement so as to entail rejection of the application form or that it is only directory provision and the filing of the attested xerox copies along with the application and the submission of the original documents later on should be treated as substantial compliance. The point formulated as above requires a serious consideration. Rule. Learned counsel for the respondents Nos. 1 and 2 waive service of notice of rule. Learned counsel were also heard on the question of interim relief. In the facts and circumstances of the case when it is found that the petitioner has a fair question to raise and she has applied before respondent No.1 at the cost of losing her job with her earlier employer on the same post based on the selection, this court finds that equity demands that her candidature may be considered and she may be interviewed along with other candidates for the post of Vidya Sahayak for Nagar Prathmik Sikhshan Samiti, Upleta. However, it is ordered that the result of the consideration of her candidature shall be kept in a separate sealed cover and till next date no appointments shall be made against one of the nine posts which were advertised vide advertisement dated 1-6-1999. Put up on 21-12-1999. In the meanwhile the respondents may also file any further replies if they choose. The sealed cover shall be produced before the Court on 21-12-1999 along with the select list with regard to eight posts which were advertised.

The learned Advocate for the petitioner submitted that taking into consideration the fact that denying a person to apply to different districts without attaching the certificates in original works very hard on the candidates. Therefore, the interpretation put by the learned single Judge in the subsequent judgement is the right solution found to a problem of this nature. He submitted that the condition of supplying the certificates in original should be interpreted to mean that the certificates in original be supplied at the time of giving appointment by the authorities.

6. In the considered opinion of this Court, the submissions of the learned Advocate for the petitioner deserves to be accepted. The same are accepted. In that view of the matter, the present petition is allowed. The respondent is directed to consider the case of the petitioner within six weeks from the date of receipt of this order and on he being found eligible on merits, he should be given an appointment, regardless of the fact that the original certificates were not attached to the application by the petitioner. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)
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